

# **Title 13-C: MAINE BUSINESS CORPORATION ACT**

## **Chapter 8: DIRECTORS AND OFFICERS**

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**Maine Revised Statutes**  
**Title 13-C: MAINE BUSINESS CORPORATION ACT**  
**Chapter 8: DIRECTORS AND OFFICERS**

**Subchapter 1: BOARD OF DIRECTORS**

**§801. REQUIREMENT; DUTIES OF BOARD OF DIRECTORS**

**1. Board of directors.** Except as provided in section 743, a corporation must have a board of directors.

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**2. Corporate powers.** All corporate powers must be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, the corporation's board of directors, subject to any limitation set forth in an agreement authorized under section 743 or in the corporation's articles of incorporation.

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF).

**§802. QUALIFICATIONS OF DIRECTORS**

**1. General.** The corporation's articles of incorporation or bylaws may prescribe qualifications for directors or for nominees for directors.

[ 2015, c. 259, §12 (NEW) .]

**2. Residency, shareholder.** A director need not be a resident of this State or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

[ 2015, c. 259, §12 (NEW) .]

**3. Timing and application of nominee qualifications.** A qualification for nomination for director prescribed before a person's nomination applies to such person at the time of nomination. A qualification for nomination for director prescribed after a person's nomination does not apply to such person with respect to such nomination.

[ 2015, c. 259, §12 (NEW) .]

**4. Timing and application of director qualifications.** A qualification for director prescribed before the start of a director's term applies only at the time an individual becomes a director or may apply during a director's term. A qualification prescribed during a director's term does not apply to that director before the end of that term.

[ 2015, c. 259, §12 (NEW) .]

SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2015, c. 259, §12 (RPR) .

## §803. NUMBER AND ELECTION OF DIRECTORS

**1. Number of directors.** A corporation's board of directors must consist of one or more individuals. The corporation's articles of incorporation or bylaws may fix the number of directors or otherwise regulate the size of the board.

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**2. Increase or decrease in number.** Unless the corporation's articles of incorporation or bylaws provide otherwise, the number of directors may be increased or decreased from time to time by resolution of the shareholders or the directors. A decrease in the number of directors may not have the effect of shortening the term of any incumbent director.

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**3. Election.** Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under section 806.

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

### SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF).

## §804. ELECTION OF DIRECTORS BY CERTAIN CLASSES OF SHAREHOLDERS

If the corporation's articles of incorporation authorize dividing the shares into classes, the articles may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes of shares. Each class of shares entitled to elect one or more directors is a separate voting group for purposes of the election of directors. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

### SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF).

## §805. TERMS OF DIRECTORS

**1. Terms of initial directors.** The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**2. Terms of subsequent directors.** The terms of all other directors expire at the next, or if their terms are staggered in accordance with section 806, at the applicable 2nd or 3rd, annual shareholders' meeting following their election.

[ 2007, c. 289, §13 (AMD) .]

**3. Decrease in number of directors.** A decrease in the number of directors does not shorten an incumbent director's term.

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**4. Term of director elected to fill vacancy.** The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which directors are elected or, in the case of staggered terms, at such other time as the corporation's articles of incorporation may provide.

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**5. Continue service.** Despite the expiration of a director's term, the director continues to serve until a successor is elected and qualifies or until there is a decrease in the number of directors.

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

#### SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2007, c. 289, §13 (AMD) .

## §806. STAGGERED TERMS FOR DIRECTORS

The corporation's articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into 2 or 3 groups, with each group containing, as close as possible, 1/2 or 1/3, as the case may be, of the total. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the 2nd group expire at the 2nd annual shareholders' meeting after their election and the terms of the 3rd group, if any, expire at the 3rd annual shareholders' meeting after their election. At each annual shareholders' meeting thereafter, directors must be chosen for a term of 2 years or 3 years, as the case may be, to succeed those whose terms expire. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

#### SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF) .

## §807. RESIGNATION OF DIRECTORS

**1. Notice of resignation.** A director may resign at any time by delivering a written resignation to the corporation's board of directors or its chair or to the clerk of the corporation.

[ 2007, c. 289, §14 (AMD) .]

**2. Effective.** A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date, including, but not limited to, the date on which some specified future event occurs.

A resignation that is conditioned upon failing to receive a specified vote for election as a director may provide that the resignation is irrevocable.

[ 2007, c. 289, §14 (AMD) .]

#### SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2007, c. 289, §14 (AMD) .

## §808. REMOVAL OF DIRECTORS BY SHAREHOLDERS

The shareholders may remove one or more directors with or without cause unless the corporation's articles of incorporation provide that directors may be removed only for cause. A director may be removed by the shareholders only at a meeting called for the purpose of removing that director and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**1. Removal by voting group.** If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove that director.

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**2. Votes needed to remove.** If cumulative voting is authorized, a director may not be removed if the number of votes sufficient to elect that director under cumulative voting is voted against the removal of that director. If cumulative voting is not authorized, a director may be removed only by the affirmative vote of at least 2/3 of the shares entitled to vote on the removal. The corporation's articles of incorporation may require a greater or lesser vote in order to remove directors but not less than a majority of votes cast, including, but not limited to, the necessity of a unanimous vote of shareholders or relevant voting group.

[ 2003, c. 344, Pt. B, §64 (AMD) .]

#### SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2003, c. 344, §B64 (AMD).

## §809. REMOVAL OF DIRECTORS BY JUDICIAL PROCEEDING

**1. Removal by Superior Court.** The Superior Court of the county where a corporation's principal office or, if there is no principal office in this State, of Kennebec County may remove a director of the corporation from office in a proceeding commenced by or in the right of the corporation if the court finds that:

A. The director engaged in fraudulent conduct with respect to the corporation or its shareholders, grossly abused the position of director or intentionally inflicted harm on the corporation; and [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

B. Considering the director's course of conduct and the inadequacy of other available remedies, removal would be in the best interest of the corporation. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

[ 2007, c. 323, Pt. C, §14 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

**2. Comply with requirements.** A shareholder proceeding on behalf of the corporation under subsection 1 shall comply with all of the requirements of chapter 7, subchapter IV, except section 752, subsection 1.

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**3. Bar from reelection.** The court, in addition to removing the director, may bar the director from reelection for a period prescribed by the court.

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**4. Other relief.** This section does not limit the equitable powers of the court to order other relief.

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

#### SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2007, c. 323, Pt. C, §14 (AMD). 2007, c. 323, Pt. G, §4 (AFF).

## §810. VACANCY ON BOARD

**1. Vacancy.** Unless the corporation's articles of incorporation or bylaws provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors, the vacancy may be filled:

A. By the shareholders; [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

B. By the corporation's board of directors; or [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

C. If the directors remaining in office constitute fewer than a quorum of the board, by the affirmative vote of a majority of all the directors remaining in office. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**2. Voting group.** If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders and only the directors elected by that voting group are entitled to fill the vacancy if it is filled by the directors.

[ 2007, c. 289, §15 (AMD) .]

**3. Specified date of vacancy.** A vacancy that will occur at a specific later date may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

### SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2007, c. 289, §15 (AMD).

## §811. COMPENSATION OF DIRECTORS

Unless the corporation's articles of incorporation or bylaws provide otherwise, the corporation's board of directors may fix the compensation of directors. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

### SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF).

## Subchapter 2: MEETINGS AND ACTION OF BOARD

## §821. MEETINGS

**1. Location.** The corporation's board of directors may hold regular or special meetings in or out of this State.

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**2. Participation of directors.** Unless the corporation's articles of incorporation or bylaws provide otherwise, the corporation's board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

#### SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF).

## §822. ACTION WITHOUT MEETING

**1. Action without meeting.** Except to the extent that the corporation's articles of incorporation or bylaws require that action by the corporation's board of directors be taken at a meeting, action required or permitted by this Act to be taken by a corporation's board of directors may be taken without a meeting if each director signs a consent describing the action to be taken and delivers it to the corporation.

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**2. Delivery of consents; revocation.** Action taken under this section is the act of the corporation's board of directors when one or more consents signed by all the directors are delivered to the corporation. The consent may specify the time at which the action taken under the consent is to be effective. A director's consent may be withdrawn by a revocation signed by the director and delivered to the corporation prior to delivery to the corporation of unrevoked written consents signed by all of the directors.

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**3. Effect of signed consent.** A consent signed under this section has the effect of action taken at a meeting of the corporation's board of directors and may be described as such in any document.

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

#### SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF).

## §823. NOTICE OF MEETING

**1. Regular meetings.** Unless the corporation's articles of incorporation or bylaws provide otherwise, regular meetings of the corporation's board of directors may be held without notice of the date, time, place or purpose of the meeting.

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**2. Special meetings.** Unless the corporation's articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the corporation's board of directors must be preceded by at least 2 days' notice of the date, time and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the corporation's articles of incorporation or bylaws.

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]



**3. Calling of meeting.** Unless the corporation's articles of incorporation or bylaws otherwise provide, special meetings of the corporation's board of directors may be called by the chair of the board, by the president or, if the president is absent or is unable to act, by any vice-president, by any 2 directors or by any other person or persons authorized by the bylaws.

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**4. Notice of meeting.** At the written request of any person permitted to call a special meeting of the corporation's board of directors pursuant to subsection 3, the secretary or clerk shall send notices of the meeting to all the directors or the person calling the meeting may send such notices. The person calling the special meeting shall set the time of the meeting and, unless the place of meetings is specified in the bylaws or by prior resolution of the directors, the place of the meeting.

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

#### SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF).

### §824. WAIVER OF NOTICE

**1. Waive notice of meeting.** A director may waive any notice required by this Act, the corporation's articles of incorporation or bylaws before or after the date and time stated in the notice. Except as provided by subsection 2, the waiver must be in writing, signed by the director entitled to the notice and filed with the minutes or corporate records.

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**2. Attendance at meeting waives requirement of notice.** A director's attendance at or participation in a meeting waives any required notice to that director of the meeting unless the director at the beginning of the meeting or promptly upon the director's arrival objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**3. Waiver by absent director.** If a meeting otherwise valid of the corporation's board of directors is held without call or notice when a notice is required, any defects of notice are deemed waived by a director who did not attend unless within 10 days after learning of the meeting and actions taken at the meeting the director delivers to the corporation written objection to the transacting of business at the meeting.

[ 2003, c. 344, Pt. B, §65 (AMD) .]

#### SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2003, c. 344, §B65 (AMD) .

### §825. QUORUM AND VOTING

**1. Quorum.** Unless the corporation's articles of incorporation or bylaws require a greater number or unless otherwise specifically provided in this Act, a quorum of a corporation's board of directors consists of:

A. A majority of the fixed number of directors if the corporation has a fixed board size; or [ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

B. A majority of the number of directors prescribed, or if no number is prescribed, the number in office immediately before the meeting begins, if the corporation has a variable-range size board. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**2. Lower quorum permitted.** The corporation's articles of incorporation or bylaws may authorize a quorum of a corporation's board of directors to consist of not less than 1/3 of the fixed or prescribed number of directors determined under subsection 1.

[2003, c. 344, Pt. B, §66 (AMD) .]

**3. Majority vote.** If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the corporation's board of directors unless the corporation's articles of incorporation or bylaws require the vote of a greater number of directors.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**4. Dissent; abstention.** A director who is present at a meeting of the corporation's board of directors or a committee of the corporation's board of directors when corporate action is taken is deemed to have assented to the action taken unless:

A. The director objects at the beginning of the meeting or promptly upon arrival to holding or transacting business at the meeting; [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

B. The director's dissent or abstention from the action taken is entered in the minutes of the meeting; or [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

C. The director delivers written notice of the director's dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

#### SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2003, c. 344, §B66 (AMD) .

## §826. COMMITTEES

**1. Create committees.** Unless this Act, the articles of incorporation or the bylaws provide otherwise, a corporation's board of directors may create one or more committees and appoint one or more members of the corporation's board of directors to serve on each of those committees.

[2003, c. 631, §17 (AMD) .]

**2. Approval of committee.** Unless this Act otherwise provides, the creation of a committee and appointment of members to a committee must be approved by the greater of:

A. A majority of all the directors in office when the action is taken; and [2003, c. 631, §17 (AMD) .]

B. The number of directors required by the corporation's articles of incorporation or bylaws to take action under section 825. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

[ 2003, c. 631, §17 (AMD) .]

**3. Requirements apply to committees.** Sections 821 to 825 apply both to committees of the board and to the members of such committees.

[ 2003, c. 631, §17 (AMD) .]

**4. Authority.** To the extent specified by the corporation's board of directors or in the corporation's articles of incorporation or bylaws, except as provided in subsection 5, each committee may exercise the authority of the corporation's board of directors under section 801.

[ 2003, c. 631, §17 (AMD) .]

**5. Limits on authority.** A committee may not:

A. Authorize or approve distributions except according to a formula or method or within limits that the corporation's board of directors prescribes; [2003, c. 631, §17 (AMD).]

B. Approve or propose to shareholders action that this Act requires be approved by shareholders; [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

C. Fill vacancies on the corporation's board of directors or, subject to subsection 7, on any of its committees; or [2003, c. 631, §17 (AMD).]

D. [2003, c. 631, §17 (RP).]

E. Adopt, amend or repeal the corporation's bylaws. [2003, c. 631, §17 (AMD).]

F. [2003, c. 631, §17 (RP).]

G. [2003, c. 631, §17 (RP).]

H. [2003, c. 631, §17 (RP).]

[ 2003, c. 631, §17 (AMD) .]

**6. Standards of conduct.** The creation of, delegation of authority to or action by a committee does not alone constitute compliance by a director with the standards of conduct described in section 831.

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**7. Committee member alternates.** A corporation's board of directors may appoint one or more directors as alternate members of any committee to replace any absent or disqualified members during the absence or disqualification. Unless the corporation's articles of incorporation or the bylaws or the resolution creating the committee provides otherwise, in the event of the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting may appoint by unanimous vote another director to act in place of the absent or disqualified member.

[ 2003, c. 631, §17 (NEW) .]

#### SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2003, c. 631, §17 (AMD).

## §827. SUBMISSION OF MATTERS FOR SHAREHOLDER VOTE

A corporation may agree to submit a matter to a vote of its shareholders even if, after approving the matter, the board of directors determines it no longer recommends the matter. [2011, c. 274, §32 (NEW).]

### SECTION HISTORY

2011, c. 274, §32 (NEW).

## Subchapter 3: DIRECTORS

## §831. STANDARDS OF CONDUCT FOR DIRECTORS

**1. Basic standard of conduct.** Each member of the corporation's board of directors when discharging the duties of a director shall act:

A. In good faith; and [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

B. In a manner the director reasonably believes to be in the best interests of the corporation. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

**2. General standard of care.** The members of the corporation's board of directors or a committee of the board, when becoming informed in connection with their decision-making function or devoting attention to their oversight function, shall discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

**3. Permitted delegation.** In discharging board or committee duties, a director who does not have knowledge that makes reliance unwarranted is entitled to rely on the performance by any of the persons specified in subsection 5, paragraph A or C to whom the board may have delegated, formally or informally by course of conduct, the authority or duty to perform one or more of the board's functions that are delegable under applicable law.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

**4. Information provided by others.** In discharging board or committee duties, a director who does not have knowledge that makes reliance unwarranted is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, prepared or presented by any of the persons specified in subsection 5.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

**5. Standard for reliance.** A director is entitled in accordance with subsection 3 or 4 to rely on:

A. One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports or statements provided; [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

B. Legal counsel, public accountants or other persons retained by the corporation as to matters involving skills or expertise the director reasonably believes are matters within the particular person's professional or expert competence or as to which the particular person merits confidence; or [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

C. A committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence. [ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF). ]

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) . ]

**6. Interests of other constituencies.** In discharging their duties, the directors and officers of the corporation may, in considering the best interests of the corporation and of its shareholders, consider the effects of any action upon employees, suppliers and customers of the corporation, communities in which offices or other establishments of the corporation are located and all other pertinent factors.

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) . ]

**7. Disclosure.** In discharging board or committee duties, a director shall disclose, or cause to be disclosed, to the other board or committee members information not already known by them but known by the director to be material to the discharge of their decision-making or oversight functions, except that disclosure is not required to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality or a professional ethics rule.

[ 2007, c. 289, §16 (NEW) . ]

#### SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2007, c. 289, §16 (AMD) .

## §832. STANDARDS OF LIABILITY FOR DIRECTORS

**1. Basis for potential liability.** A director of a corporation is not liable to the corporation or its shareholders for any decision to take or not to take action, or any failure to take any action, as a director, unless the party asserting liability in a proceeding establishes that:

A. A defense interposed by the director does not preclude liability if the defense is based on:

- (1) Any provision in the corporation's articles of incorporation authorized by section 202, subsection 2, paragraph D or F;
- (2) The protection afforded by section 872 for action taken in compliance with section 873 or 874; or
- (3) The protection afforded by section 881; and [ 2015, c. 259, §13 (AMD) . ]

B. The challenged conduct consisted or was the result of:

- (1) Action not in good faith;
- (2) A decision:
  - (a) That the director did not reasonably believe to be in the best interests of the corporation; or
  - (b) As to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances;
- (3) A lack of objectivity due to the director's familial, financial or business relationship with, or a lack of independence due to the director's domination or control by, another person having a material interest in the challenged conduct when that relationship or domination or control could reasonably be expected to have affected the director's judgment respecting the challenged conduct in a manner adverse to that corporation, and, after a reasonable expectation to that effect has been established, the director did not establish that the challenged conduct was reasonably believed by the director to be in the best interests of the corporation;

(4) A sustained failure of the director to devote attention to ongoing oversight of the business and affairs of the corporation, or a failure to devote timely attention, by making or causing to be made appropriate inquiry, when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive director to the need therefor; or

(5) Receipt of a financial benefit to which the director was not entitled or any other breach of the director's duties to deal fairly with the corporation and its shareholders that is actionable under applicable law. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

[ 2015, c. 259, §13 (AMD) .]

**2. Additional elements.** In addition to the burden set forth in subsection 1, the party seeking to hold the director liable:

A. For money damages has the burden of establishing that:

(1) Harm to the corporation or its shareholders has been suffered; and

(2) The harm suffered was proximately caused by the director's challenged conduct; [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

B. For money payment under a legal remedy, such as compensation for the unauthorized use of corporate assets, has whatever persuasion burden may be called for to establish that the payment sought is appropriate in the circumstances; or [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

C. For money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, has whatever persuasion burden may be called for to establish that the equitable remedy sought is appropriate in the circumstances. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**3. Other causes of action.** This section does not:

A. In any instance when fairness is at issue, such as consideration of the fairness of a transaction to the corporation under section 872, subsection 2, paragraph C, alter the burden of proving the fact or lack of fairness otherwise applicable; [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

B. Alter the fact or lack of liability of a director under another section of this Act, such as the provisions governing the consequences of an unlawful distribution under section 833 or a transactional interest under section 872; or [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

C. Affect any rights to which the corporation or a shareholder may be entitled under another law of this State or the United States. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

#### SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2007, c. 289, §17 (AMD). 2015, c. 259, §13 (AMD).

## §833. DIRECTOR'S LIABILITY FOR UNLAWFUL DISTRIBUTIONS

**1. Personal liability.** A director who votes for or assents to a distribution in excess of what may be authorized and made pursuant to section 651, subsection 1 or section 1410, subsection 1 is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating section 651, subsection 1 or section 1410, subsection 1 if the party asserting liability establishes that when taking the action the director did not comply with section 831.

[ 2003, c. 631, §18 (AMD) .]

**2. Contribution; recoupment.** A director held liable under subsection 1 for an unlawful distribution is entitled to:

A. A contribution from every other director who could be held liable under subsection 1 for the unlawful distribution; and [2001, c. 2, Pt. A, §19 (AFF); 2001, c. 2, Pt. A, §18 (COR).]

B. Recoupment from each shareholder of the pro rata portion of the amount of the unlawful distribution the shareholder accepted, knowing the distribution was made in violation of section 651, subsection 1 or section 1410, subsection 1. [2003, c. 631, §18 (AMD).]

[ 2003, c. 631, §18 (AMD) .]

**3. Proceeding to enforce liability; 2-year period.** A proceeding to enforce the liability of a director under subsection 1 is barred unless it is commenced within 2 years after the date:

A. On which the effect of the distribution was measured under section 651, subsection 5 or 7; [2003, c. 631, §18 (NEW).]

B. As of which the violation of section 651, subsection 1 occurred as the consequence of disregard of a restriction in the corporation's articles of incorporation; or [2003, c. 631, §18 (NEW).]

C. On which the distribution of assets to shareholders under section 1410, subsection 1 was made. [2003, c. 631, §18 (NEW).]

[ 2003, c. 631, §18 (AMD) .]

**4. Proceeding to enforce contribution or recoupment; one-year period.** A proceeding to enforce a contribution or recoupment under subsection 2 is barred unless it is commenced within one year after the liability of the claimant has been finally adjudicated under subsection 1.

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

### SECTION HISTORY

RR 2001, c. 2, §A19 (AFF). RR 2001, c. 2, §A18 (COR). 2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2003, c. 631, §18 (AMD).

## Subchapter 4: OFFICERS

### §841. OFFICES

**1. Offices.** A corporation has the offices described in its bylaws or designated by the corporation's board of directors in accordance with the bylaws.

[ 2003, c. 631, §19 (AMD) .]

**2. Appointment of officers.** The board of directors may elect individuals to fill one or more offices of the corporation. An officer may appoint one or more officers or assistant officers if authorized by the bylaws or the corporation's board of directors.

[ 2003, c. 631, §19 (AMD) .]

**3. Responsibility for minutes and shareholder records.** The bylaws or the corporation's board of directors shall assign to one of the officers responsibility for preparing minutes of the directors' and shareholders' meetings and for maintaining and authenticating the records of the corporation that section 1601, subsections 1 and 3 require to be kept.

[ 2003, c. 631, §19 (AMD) .]

**4. Multiple positions.** The same individual may simultaneously hold more than one office in a corporation.

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

#### SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2003, c. 631, §19 (AMD) .

## §842. FUNCTIONS OF OFFICERS

**1. Sources.** An officer has the authority and shall perform the functions set forth in the bylaws or, to the extent consistent with the bylaws, the functions prescribed by the corporation's board of directors or by direction of an officer authorized by the corporation's board of directors to prescribe the functions of other officers.

[ 2007, c. 289, §18 (AMD) .]

**2. President.** Unless otherwise provided by the bylaws, the officer designated as president has authority to institute or defend legal proceedings whenever the directors or shareholders are deadlocked. Unless they have reason to believe otherwise, persons dealing with a corporation are entitled to assume that the officer designated as president has authority to make, on the corporation's behalf, all contracts that are within the ordinary course of those businesses in which the corporation is already engaged.

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

#### SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2007, c. 289, §18 (AMD) .

## §843. STANDARDS OF CONDUCT FOR OFFICERS

**1. Basic standard of conduct.** An officer, when performing in the capacity of an officer, has the duty to act:

A. In good faith; [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

B. With the care that a person in a like position would reasonably exercise under similar circumstances; and [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]



C. In a manner the officer reasonably believes to be in the best interests of the corporation. [ 2001 , c. 640 , Pt. A , §2 (NEW); 2001 , c. 640 , Pt. B , §7 (AFF) .]

[ 2007 , c. 289 , §19 (AMD) .]

## **2. Basis for reliance.**

[ 2003 , c. 631 , §20 (RP) .]

**2-A. Basis for reliance.** In discharging the duties under section 842, an officer who does not have knowledge that makes reliance unwarranted is entitled to rely on:

A. The performance of properly delegated responsibilities by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in performing the responsibilities delegated; and [ 2003 , c. 631 , §21 (NEW) .]

B. Information, opinions, reports or statements, including financial statements and other financial data, prepared or presented by:

(1) One or more employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or

(2) Legal counsel, public accountants or other persons retained by the corporation as to matters involving skills or expertise the officer reasonably believes are matters within the particular person's professional or expert competence or as to which the particular person merits confidence. [ 2003 , c. 631 , §21 (NEW) .]

[ 2003 , c. 631 , §21 (NEW) .]

**3. Basis for potential liability.** An officer is not liable to the corporation or its shareholders for any decision to take or not to take action, or any failure to take any action, as an officer if the duties of the office are performed in compliance with this section. Whether an officer who does not comply with this section has liability depends on applicable law, including those principles of section 832 that have relevance.

[ 2001 , c. 640 , Pt. A , §2 (NEW); 2001 , c. 640 , Pt. B , §7 (AFF) .]

## **SECTION HISTORY**

2001 , c. 640 , §A2 (NEW). 2001 , c. 640 , §B7 (AFF). 2003 , c. 631 , §§20,21 (AMD). 2007 , c. 289 , §19 (AMD).

## **§844. RESIGNATION AND REMOVAL OF OFFICERS**

**1. Resignation.** An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective time. If a resignation is made effective at a later time, including, but not limited to, the time at which some specified future event occurs and the corporation's board of directors or the appointing officer accepts the future effective time, the corporation's board of directors or the appointing officer may fill the pending vacancy before the effective time if the corporation's board of directors or the appointing officer provides that the successor does not take office until the effective time.

[ 2001 , c. 640 , Pt. A , §2 (NEW); 2001 , c. 640 , Pt. B , §7 (AFF) .]

**2. Removal from office.** An officer may be removed at any time with or without cause by:

A. The corporation's board of directors; [ 2001 , c. 640 , Pt. A , §2 (NEW); 2001 , c. 640 , Pt. B , §7 (AFF) .]

B. The officer who appointed that officer, unless the bylaws or the corporation's board of directors provides otherwise; or [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

C. Any other officer if authorized by the bylaws or the corporation's board of directors. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**3. Appointing officer defined.** As used in this section, "appointing officer" means the officer, including any successor to that officer, who appointed the officer resigning or being removed.

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

#### SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF).

## §845. CONTRACT RIGHTS OF OFFICERS

**1. No implied contract rights.** The appointment of an officer does not itself create contract rights.

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**2. Effect of removal or resignation on contract rights.** An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

#### SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF).

## §846. CLERK

*(REPEALED)*

#### SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2003, c. 344, §B67 (RP).

## Subchapter 5: INDEMNIFICATION AND ADVANCE FOR EXPENSES

## §851. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

**1. Corporation.** "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger.

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**2. Director; officer.** "Director" or "officer" means an individual who is or was a director or officer, respectively, of a corporation or who, while a director or officer of the corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan or other entity. A director or officer is

considered to be serving an employee benefit plan at the corporation's request if the director's or officer's duties to the corporation also impose duties on, or otherwise involve services by, the director or officer to the plan or to participants in or beneficiaries of the plan. "Director" or "officer" includes, unless the context requires otherwise, the estate or personal representative of a director or officer.

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

### **3. Disinterested director.**

[ 2007, c. 289, §20 (RP) .]

### **4. Expenses.**

[ 2007, c. 289, §21 (RP) .]

**5. Liability.** "Liability" means the obligation to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or expenses incurred with respect to a proceeding.

[ 2007, c. 289, §22 (AMD) .]

### **6. Official capacity.** "Official capacity" means:

A. When used with respect to a director, the office of director in a corporation; and [ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

B. When used with respect to an officer, as contemplated in section 857, the office in a corporation held by the officer. [ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

"Official capacity" does not include service for any other domestic or foreign corporation or any partnership, joint venture, trust, employee benefit plan or other entity.

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**7. Party.** "Party" means an individual who was, is or is threatened to be made a defendant or respondent in a proceeding.

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**8. Proceeding.** "Proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitral or investigative and whether formal or informal.

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

#### **SECTION HISTORY**

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2007, c. 289, §§20-22 (AMD) .

## **§852. PERMISSIBLE INDEMNIFICATION**

**1. Standards of conduct.** Except as otherwise provided in this section, a corporation may indemnify an individual who is a party to a proceeding because that individual is a director of the corporation against liability incurred in the proceeding if:

A. The following criteria are met:

- (1) The individual's conduct was in good faith;
- (2) The individual reasonably believed:
  - (a) In the case of conduct in the individual's official capacity, that the individual's conduct was in the best interests of the corporation; and
  - (b) In all other cases, that the individual's conduct was at least not opposed to the best interests of the corporation; and
- (3) In the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful; or [2003, c. 344, Pt. B, §68 (AMD).]

B. The individual engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the corporation's articles of incorporation as authorized by section 202, subsection 2, paragraph E. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

[ 2003, c. 344, Pt. B, §68 (AMD) .]

**2. Employee benefit plan.** The conduct of a director with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in, and the beneficiaries of, the plan is conduct that satisfies the requirement of subsection 1, paragraph A, subparagraph (2), division (b).

[ 2003, c. 344, Pt. B, §68 (AMD) .]

**3. Termination of proceeding.** The termination of a proceeding by judgment, order, settlement or conviction or upon a plea of nolo contendere or its equivalent is not of itself determinative that the director did not meet the relevant standard of conduct described in this section.

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**4. Limits.** Unless ordered by a court under section 855, subsection 1, paragraph C, a corporation may not indemnify one of the corporation's directors:

A. In connection with a proceeding by or in the right of the corporation, except for reasonable expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct under subsection 1; or [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

B. In connection with any proceeding with respect to conduct for which the director was adjudged liable on the basis that the director received a financial benefit to which the director was not entitled, whether or not involving action in the director's official capacity. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

[ 2003, c. 344, Pt. B, §68 (AMD) .]

#### SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2003, c. 344, §B68 (AMD).

## §853. MANDATORY INDEMNIFICATION

A corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because the director was a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

#### SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF).

## §854. ADVANCE FOR EXPENSES

**1. Conditions.** A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse the expenses incurred in connection with the proceeding by an individual who is a party to the proceeding because that individual is a member of the board of directors, if the individual delivers to the corporation:

A. A signed written affirmation of the individual's good faith belief that the individual has met the relevant standard of conduct described in section 852, subsection 1 or that the proceeding involves conduct for which liability has been eliminated under a provision of the corporation's articles of incorporation as authorized by section 202, subsection 2, paragraph D; and [2011, c. 274, §33 (AMD).]

B. The individual's signed written undertaking to repay any funds advanced if the individual is not entitled to mandatory indemnification under section 853 and it is ultimately determined under section 855 or 856 that the individual has not met the relevant standard of conduct described in section 852. [2011, c. 274, §33 (AMD).]

[ 2011, c. 274, §33 (AMD) .]

**2. Repayment obligation.** The undertaking required by subsection 1, paragraph B must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.

[ 2003, c. 344, Pt. B, §68 (AMD) .]

**3. Authorization process.** Authorizations under this section may be made:

A. By the corporation's board of directors:

(1) If there are 2 or more qualified directors, by a majority vote of all the qualified directors, a majority of whom for this purpose constitutes a quorum, or by a majority of the members of a committee of 2 or more qualified directors appointed by a majority vote of all the qualified directors; or

(2) If there are fewer than 2 qualified directors, by the vote necessary for action by the corporation's board of directors in accordance with section 825, subsection 3, in which authorization directors who do not qualify as qualified directors may participate; or [2007, c. 289, §24 (AMD) .]

B. By the shareholders, but shares owned by or voted under the control of a director who at the time is not a qualified director may not be voted on the authorization. [2007, c. 289, §24 (AMD) .]

[ 2007, c. 289, §24 (AMD) .]

### SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2003, c. 344, §B68 (AMD). 2007, c. 289, §§23, 24 (AMD). 2011, c. 274, §33 (AMD).

## §855. COURT-ORDERED INDEMNIFICATION; ADVANCE FOR EXPENSES

**1. Application and order.** A director who is a party to a proceeding because the director is a director of the corporation may apply for indemnification or an advance for expenses to the court conducting the proceeding or to another court of competent jurisdiction. After receipt of an application and after giving any notice the court considers necessary, the court shall:

A. Order indemnification if the court determines that the director is entitled to mandatory indemnification under section 853; [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

B. Order indemnification or an advance for expenses if the court determines that the director is entitled to indemnification or an advance for expenses pursuant to a provision authorized by section 859, subsection 1; or [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

C. Order indemnification or an advance for expenses if the court determines, in view of all the relevant circumstances, that it is fair and reasonable:

(1) To indemnify the director; or

(2) To advance expenses to the director even if the director has not met the relevant standard of conduct set forth in section 852, subsection 1, failed to comply with section 854 or was adjudged liable in a proceeding referred to in section 852, subsection 4, paragraph A or B, but, if the director was adjudged so liable, the director's indemnification must be limited to reasonable expenses incurred in connection with the proceeding. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

[ 2003, c. 344, Pt. B, §68 (AMD) .]

**2. Entitlement to expenses.** If the court determines that the director is entitled to indemnification under subsection 1, paragraph A or to indemnification or an advance for expenses under subsection 1, paragraph B, the court shall also order the corporation to pay the director's reasonable expenses incurred in connection with obtaining the court-ordered indemnification or advance for expenses. If the court determines that the director is entitled to indemnification or an advance for expenses under subsection 1, paragraph C, the court may also order the corporation to pay the director's reasonable expenses incurred in connection with obtaining the court-ordered indemnification or advance for expenses.

[ 2003, c. 344, Pt. B, §68 (AMD) .]

#### SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2003, c. 344, §B68 (AMD).

## §856. DETERMINATION AND AUTHORIZATION OF INDEMNIFICATION

**1. Prerequisites to indemnity.** A corporation may not indemnify a director under section 852, subsection 1 unless authorized for a specific proceeding after a determination has been made that indemnification of the director is permissible because the director has met the relevant standard of conduct set forth in section 852.

[ 2003, c. 344, Pt. B, §68 (AMD) .]

**2. Determination of permissibility.** A determination under subsection 1 that indemnification is permissible must be made:

A. If there are 2 or more qualified directors, by the corporation's board of directors by a majority vote of all the qualified directors, a majority of whom for this purpose constitutes a quorum, or by a majority of the members of a committee of 2 or more qualified directors appointed by a majority vote of all the qualified directors; [2007, c. 289, §25 (AMD).]

B. By special legal counsel:

(1) Selected in the manner prescribed in paragraph A; or

(2) If there are fewer than 2 qualified directors, selected by the corporation's board of directors in which selection directors who are not qualified directors may participate; or [ 2007, c. 289, §25 (AMD) . ]

C. By the shareholders, but shares owned by or voted under the control of a director who at the time is not a qualified director may not be voted on the determination. [ 2007, c. 289, §25 (AMD) . ]

[ 2007, c. 289, §25 (AMD) . ]

**3. Authorization process.** Authorization of indemnification must be made in the same manner as the determination that indemnification is permissible, except that if there are fewer than 2 qualified directors or if the determination is made by special legal counsel, authorization of indemnification must be made by those entitled to select special legal counsel under subsection 2, paragraph B, subparagraph (2).

[ 2007, c. 289, §26 (AMD) . ]

#### SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2003, c. 344, §B68 (AMD). 2007, c. 289, §§25, 26 (AMD).

## §857. INDEMNIFICATION OF OFFICERS

**1. Permissible scope.** A corporation may indemnify and advance expenses under this subchapter to an officer of the corporation who is a party to a proceeding because the officer is an officer of the corporation:

A. To the same extent as a director; and [ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) . ]

B. If the officer is an officer but not a director, to such further extent as may be provided by the corporation's articles of incorporation, the bylaws, a resolution of the corporation's board of directors or a contract except for:

(1) Liability in connection with a proceeding by or in the right of the corporation other than for reasonable expenses incurred in connection with the proceeding; or

(2) Liability arising out of conduct that constitutes:

(a) Receipt by the officer of a financial benefit to which the officer is not entitled;

(b) An intentional infliction of harm on the corporation or the shareholders; or

(c) An intentional violation of criminal law. [ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) . ]

[ 2003, c. 344, Pt. B, §68 (AMD) . ]

**2. Dual capacity.** Subsection 1, paragraph B applies to an officer who is also a director if the basis on which the officer is made a party to the proceeding is an act or omission solely as an officer.

[ 2003, c. 344, Pt. B, §68 (AMD) . ]

**3. Mandatory indemnification.** An officer who is not a director is entitled to mandatory indemnification under section 853 and may apply to a court under section 855 for indemnification or an advance for expenses, in each case to the same extent to which a director may be entitled to indemnification or an advance for expenses under those provisions.

[ 2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) . ]

#### SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2003, c. 344, §B68 (AMD).

## §858. INSURANCE

A corporation may purchase and maintain insurance on behalf of an individual who is a director or officer of the corporation, or who, while a director or officer of the corporation, serves at the corporation's request as a director, officer, partner, trustee, employee or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan or other entity against liability asserted against or incurred by that individual in that capacity or arising from the individual's status as a director or officer, whether or not the corporation would have power to indemnify or advance expenses to the individual against the same liability under this subchapter. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

### SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF).

## §859. VARIATION BY CORPORATE ACTION; APPLICATION OF SUBCHAPTER

**1. Undertakings to indemnify.** A corporation may, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by its board of directors or shareholders, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with section 852 or advance funds to pay for or reimburse expenses in accordance with section 854. Such an obligatory provision is deemed to satisfy the requirements for authorization referred to in sections 854, subsection 3 and 856, subsection 3. Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law is deemed to obligate the corporation to advance funds to pay for or reimburse expenses in accordance with section 854 to the fullest extent permitted by law, unless the provision specifically provides otherwise.

[ 2003, c. 344, Pt. B, §68 (AMD) .]

**1-A. Right to indemnification or to advances for expenses.** A right to indemnification or to advances for expenses created by this subchapter or under subsection 1 and in effect at the time of an act or omission giving rise to the right to indemnification or advances may not be eliminated or impaired with respect to that act or omission by an amendment of the articles of incorporation or bylaws or a resolution of the board of directors or shareholders, adopted after the occurrence of the act or omission, unless, in the case of a right to indemnification or to advances for expenses created under subsection 1, the provision creating the right and in effect at the time of the act or omission explicitly authorizes the elimination or impairment after the act or omission has occurred.

[ 2011, c. 274, §34 (NEW) .]

**2. Predecessors.** A provision pursuant to subsection 1 may not obligate the corporation to indemnify or advance expenses to a director of a predecessor of the corporation pertaining to conduct with respect to the predecessor unless otherwise specifically provided. A provision for indemnification or an advance for expenses in the corporation's articles of incorporation or bylaws or a resolution of the corporation's board of directors or shareholders of a predecessor of the corporation in a merger or in a contract to which the predecessor is a party, existing at the time the merger takes effect, is governed by section 1107, subsection 1, paragraph D.

[ 2003, c. 344, Pt. B, §68 (AMD) .]



**3. Limits.** Subject to subsection 1-A, a corporation may, by a provision in its articles of incorporation, limit the right to indemnification or to an advance for expenses created by or pursuant to this subchapter.

[ 2011, c. 274, §35 (AMD) .]

**4. Witness expenses.** This subchapter does not limit a corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with the director's or officer's appearance as a witness in a proceeding at a time when the director or officer is not a party to the proceeding.

[ 2003, c. 344, Pt. B, §68 (AMD) .]

**5. Insurance.** This subchapter does not limit a corporation's power to indemnify, advance expenses to or provide or maintain insurance on behalf of an employee or agent.

[ 2003, c. 344, Pt. B, §68 (AMD) .]

#### SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2003, c. 344, §B68 (AMD). 2011, c. 274, §§34, 35 (AMD).

## §860. EXCLUSIVITY OF SUBCHAPTER

A corporation may provide indemnification or advance expenses to a director or an officer only as permitted by this subchapter. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

#### SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF).

## Subchapter 6: DIRECTORS' CONFLICTING-INTEREST TRANSACTIONS

### §871. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

#### 1. Conflicting interest.

[ 2007, c. 289, §27 (RP) .]

##### 1-A. Control. "Control" means:

A. Having the power, directly or indirectly, to elect or remove a majority of the members of the board of directors or other governing body of an entity, whether through the ownership of voting shares or interests, by contract or otherwise; or [2007, c. 289, §27 (NEW) .]

B. Being subject to a majority of the risk of loss from the entity's activities or entitled to receive a majority of the entity's residual returns. [2007, c. 289, §27 (NEW) .]

[ 2007, c. 289, §27 (NEW) .]

##### 1-B. Controlled by. "Controlled by" means a person subject to control by another person.

[ 2007, c. 289, §27 (NEW) .]

**2. Director's conflicting-interest transaction.** "Director's conflicting-interest transaction" means, as effected or proposed to be effected by a corporation or by an entity controlled by a corporation, a transaction:

A. To which, at the relevant time, the director is a party; [2007, c. 289, §27 (NEW).]

B. That the director knew of, at the relevant time, and in which the director had a material financial interest, known by the director; or [2007, c. 289, §27 (NEW).]

C. To which a related person was a party or had a material financial interest in, known, at the relevant time, by the director. [2007, c. 289, §27 (NEW).]

[ 2007, c. 289, §27 (AMD) .]

**2-A. Material financial interest.** "Material financial interest" means a financial interest in a transaction that would reasonably be expected to impair the objectivity of the director's judgment when participating in action on the authorization of the transaction.

[ 2007, c. 289, §27 (NEW) .]

**3. Related person.** "Related person" means:

A. The individual's spouse; [2015, c. 259, §14 (AMD).]

B. [2007, c. 289, §27 (RP).]

C. A child, stepchild, grandchild, parent, stepparent, grandparent, sibling, stepsibling, half sibling, aunt, uncle, niece or nephew, or spouse of any of those persons, of the individual or of the individual's spouse; [2015, c. 259, §14 (AMD).]

D. Another individual living in the same home as the individual; [2015, c. 259, §14 (AMD).]

E. An entity, other than the corporation or an entity controlled by the corporation, controlled by the individual or any person specified in paragraph A, C or D; [2015, c. 259, §14 (AMD).]

F. A domestic or foreign:

(1) Business or nonprofit corporation, other than the corporation or an entity controlled by the corporation, of which the individual is a director;

(2) Unincorporated entity of which the individual is a general partner or a member of the governing body; or

(3) Individual, trust or estate for whom or of which the individual is a trustee, guardian, personal representative or like fiduciary; or [2015, c. 259, §14 (AMD).]

G. A person that is, or an entity that is controlled by, an employer of the individual. [2015, c. 259, §14 (AMD).]

[ 2015, c. 259, §14 (AMD) .]

**3-A. Relevant time.** "Relevant time," with regard to a transaction, means:

A. The time at which the directors' action regarding the transaction is taken in compliance with section 873; or [2007, c. 289, §27 (NEW).]

B. If the transaction is not brought before the board of directors of the corporation, or its committee, for action under section 873, the time at which the corporation or an entity controlled by the corporation becomes legally obligated to consummate the transaction. [2007, c. 289, §27 (NEW).]

[ 2007, c. 289, §27 (NEW) .]

**4. Required disclosure.** "Required disclosure" means disclosure of:

A. The existence and nature of the director's conflicting interest; and [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

B. All facts known to the director regarding the subject matter of the transaction that a director without such conflicting interest would reasonably believe to be material in deciding whether to proceed with the transaction. [2007, c. 289, §27 (AMD).]

[ 2007, c. 289, §27 (AMD) .]

#### 5. Time of commitment.

[ 2007, c. 289, §27 (RP) .]

#### SECTION HISTORY

RR 2001, c. 2, §A21 (AFF). RR 2001, c. 2, §A20 (COR). 2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2007, c. 289, §27 (AMD). 2015, c. 259, §14 (AMD).

## §872. JUDICIAL ACTION

**1. Nonconflicting-interest transaction not actionable.** A transaction effected or proposed to be effected by a corporation, or by an entity controlled by a corporation, may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against a director of the corporation, in a proceeding by a shareholder or by or in the right of the corporation on the ground that the director has an interest regarding the transaction if it is not a director's conflicting-interest transaction.

[ 2007, c. 289, §28 (AMD) .]

**2. Conflicting-interest transaction not actionable if standards met.** A director's conflicting-interest transaction may not be the subject of equitable relief or give rise to an award of damages or other sanctions against a director of the corporation, in a proceeding by a shareholder or by or in the right of the corporation, on the ground that the director has an interest regarding the transaction, if:

A. Directors' action regarding the transaction was taken in compliance with section 873 at any time; [2007, c. 289, §28 (AMD).]

B. Shareholders' action regarding the transaction was taken in compliance with section 874 at any time; or [2007, c. 289, §28 (AMD).]

C. The transaction, judged according to the circumstances at the relevant time, is established to have been fair to the corporation. For purposes of this paragraph, a transaction is fair to a corporation if, taken as a whole, the transaction was beneficial to the corporation, taking into appropriate account whether the transaction was:

(1) Fair in terms of the director's dealings with the corporation; and

(2) Comparable to what might have been obtained in an arms-length transaction, given the consideration paid or received by the corporation. [2007, c. 289, §28 (AMD).]

[ 2007, c. 289, §28 (AMD) .]

#### SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2003, c. 344, §B69 (AMD). 2007, c. 289, §28 (AMD).

## §873. DIRECTORS' ACTION

**1. Action regarding transaction.** Directors' action regarding a director's conflicting-interest transaction is effective for purposes of section 872, subsection 2, paragraph A if the transaction has been authorized by the affirmative vote of a majority, but no fewer than 2, of the qualified directors who voted on the transaction,

after required disclosure by the conflicted director of information not already known by those qualified directors, or after modified disclosure in compliance with subsection 2-A, except that action by a committee is effective under this section only if:

A. The qualified directors have deliberated and voted outside the presence of and without the participation by any other director; and [2007, c. 289, §29 (AMD).]

B. When the action has been taken by a committee, all members of the committee were qualified directors and either:

(1) The committee was composed of all the qualified directors on the board of directors; or

(2) The members of the committee were appointed by the affirmative vote of a majority of the qualified directors on the board. [2007, c. 289, §29 (AMD).]

[ 2007, c. 289, §29 (AMD) .]

## **2. Disclosure; conflicting interest.**

[ 2007, c. 289, §29 (RP) .]

**2-A. Disclosure; conflicting interest.** Notwithstanding subsection 1, when a transaction is a director's conflicting-interest transaction only because a related person described in section 871, subsection 3, paragraph F or G is a party to or has a material financial interest in the transaction, the conflicted director is not obligated to make required disclosure to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality or a professional ethics rule, as long as the conflicted director discloses to the qualified directors voting on the transaction:

A. All information required to be disclosed that would not violate a duty or obligation of the director; [2007, c. 289, §29 (NEW).]

B. The existence and nature of the director's conflicting interest; and [2007, c. 289, §29 (NEW) .]

C. The nature of the conflicted director's duty not to disclose the confidential information. [2007, c. 289, §29 (NEW) .]

[ 2007, c. 289, §29 (NEW) .]

**3. Quorum.** A majority, but no fewer than 2, of all the qualified directors on the board of directors or on a committee, constitutes a quorum for purposes of action that complies with this section.

[ 2007, c. 289, §29 (AMD) .]

## **4. Qualified director.**

[ 2007, c. 289, §29 (RP) .]

**5. Authorization when qualified director's action not taken.** When directors' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the articles of incorporation, the bylaws or a provision of law, independent action to satisfy those authorization requirements must be taken by the board of directors or a committee, in which action directors who are not qualified directors may participate.

[ 2007, c. 289, §29 (NEW) .]

### **SECTION HISTORY**

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2003, c. 344, §§B70,71 (AMD). 2007, c. 289, §29 (AMD).

## §874. SHAREHOLDERS' ACTION

**1. Shareholders' action.** Shareholders' action regarding a director's conflicting-interest transaction is effective for purposes of section 872, subsection 2, paragraph B if a majority of the votes cast by the holders of all qualified shares are in favor of the transaction after:

A. Notice to shareholders describing the action to be taken regarding the transaction; [ 2007, c. 289, §30 (AMD) . ]

B. Provision to the corporation of the information referred to in subsection 4; and [ 2007, c. 289, §30 (AMD) . ]

C. Communication to the shareholders entitled to vote on the transaction of the information that is the subject of required disclosure, to the extent the information is not known by them. [ 2007, c. 289, §30 (AMD) . ]

In the case of shareholders' action at a meeting, the shareholders entitled to vote are determined as of the record date for notice of the meeting.

[ 2011, c. 274, §36 (AMD) . ]

### 2. Qualified shares.

[ 2007, c. 289, §30 (RP) . ]

**3. Quorum.** A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of compliance with this section. Subject to subsection 5, shareholders' action that otherwise complies with this section is not affected by the presence of holders of shares that are not qualified shares, or the voting of shares that are not qualified shares.

[ 2007, c. 289, §30 (AMD) . ]

**4. Identification of holdings.** A director who has a conflicting interest regarding the transaction shall, before the shareholders' vote, inform the clerk or other officer or agent of the corporation authorized to tabulate votes, in writing, of the number of shares that the director knows are not qualified shares under subsection 3 and the identity of the holders of those shares.

[ 2007, c. 289, §30 (AMD) . ]

**5. Failure to comply.** If a shareholders' vote does not comply with subsection 1 solely because of a director's failure to comply with subsection 4 and if the director establishes that the failure was not intended to influence and did not in fact determine the outcome of the vote, the court may take such action regarding the transaction and the director and may give such effect, if any, to the shareholders' vote as the court considers appropriate in the circumstances.

[ 2007, c. 289, §30 (AMD) . ]

**6. Authorization when qualified shareholder action not taken.** When shareholders' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the articles of incorporation, the bylaws or a provision of law, independent action to satisfy those authorization requirements must be taken by the shareholders, in which action shareholders that are not qualified shareholders may participate.

[ 2007, c. 289, §30 (NEW) . ]

**7. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. [2015, c. 259, §15 (RP).]

B. "Qualified shares" means all shares entitled to be voted with respect to the transaction except for shares that the secretary or other officer or agent of the corporation authorized to count votes either knows, or under subsection 4 is notified, are held by:

(1) A director who has a conflicting interest regarding the transaction; or

(2) A related person of the director, excluding a person described in section 871, subsection 3, paragraph G. [2015, c. 259, §15 (AMD).]

[ 2015, c. 259, §15 (AMD) .]

#### SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2003, c. 344, §§B72,73 (AMD). 2007, c. 289, §30 (AMD). 2011, c. 274, §36 (AMD). 2015, c. 259, §15 (AMD).

## Subchapter 7: BUSINESS OPPORTUNITIES

### §881. BUSINESS OPPORTUNITIES

**1. Business opportunity not actionable if standards met.** If a director or officer or related person of either pursues or takes advantage, directly or indirectly, of a business opportunity, that action may not be the subject of equitable relief or give rise to an award of damages or other sanctions against the director, officer or related person, in a proceeding by or in the right of the corporation on the ground that such opportunity should have first been offered to the corporation, if :

A. Before the director, officer or related person becomes legally obligated regarding the opportunity, the director or officer brings it to the attention of the corporation and action by qualified directors disclaiming the corporation's interest in the opportunity is taken in compliance with the same procedures set forth in section 873; [2015, c. 259, §16 (AMD).]

B. Before the director, officer or related person becomes legally obligated regarding the opportunity, the director or officer brings it to the attention of the corporation and action by shareholders disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in section 874, as if the decision being made concerned a director's conflicting-interest transaction as defined in section 871, subsection 2; or [2015, c. 259, §16 (AMD).]

C. The duty to offer the corporation the particular business opportunity has been limited or eliminated pursuant to a provision of the articles of incorporation adopted and in the case of officers and their related persons, made effective by action of qualified directors in accordance with section 202, subsection 2, paragraph F. [2015, c. 259, §16 (NEW).]

In each case under paragraph A or B, the director, rather than making a required disclosure as defined in section 871, subsection 4, must have made prior disclosure to those acting on behalf of the corporation of all material facts concerning the business opportunity that are then known to the director.

[ 2015, c. 259, §16 (AMD) .]

**2. No inference or change in burden of proof.** In any proceeding seeking equitable relief or other remedies based upon an alleged improper pursuit or taking advantage of a business opportunity by a director or officer, the fact that the director or officer did not employ the procedure described in subsection 1, paragraph A or B before taking advantage of the opportunity does not create an inference that the opportunity should have been first presented to the corporation or alter the burden of proof otherwise applicable to establish that the director breached a duty to the corporation in the circumstances.

[ 2015, c. 259, §16 (AMD) .]

**3. Related person.** As used in this section, "related person" has the meaning set forth in section 871, subsection 3.

[ 2015, c. 259, §16 (NEW) .]

SECTION HISTORY

2007, c. 289, §31 (NEW). 2015, c. 259, §16 (AMD).

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